

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE

LESTER EUGENE SILER, JENNY SILER,	)	
DAKOTA SILER, a minor, by and through next	)	
friends, LESTER E. SILER and JENNY SILER,	)	
	)	
Plaintiffs,	)	No.:3:04-cv-192
	)	(Jarvis/Guton)
GERALD DAVID WEBBER,	)	
et al.,	)	
	)	
Defendants.	)	

**MEMORANUDM OF LAW IN SUPPORT OF**  
**WESTERN SURETY INSURANCE COMPANY'S MOTION TO DISMISS**

The defendant, Western Surety Insurance Company ("Western Surety"), does hereby appear, by and through counsel, and for its memorandum of law in support of its motion to dismiss states as follows:

It is apparent that plaintiffs' complaint against Western Surety is not as a result of any action or inaction on the part of Western Surety. Rather, said claims are brought by virtue of the mere fact that Western Surety may provide a bond for the defendants. The bond is required by the State of Tennessee in Tenn. Code Ann. § 8-8-103 and § 8-8-301. Other than there being an agreement of insurance, there is no allegation which would render Western Surety directly liable to the plaintiffs for any act as set out in their complaint. *See* Order of Judge Phillips in the case of *Drinnen v. Timothy Hutchison, et al.*, (3:02-cv-726), which is attached hereto as Exhibit A. Judge Phillips held that nothing in § 8-8-103 or §§ 8-19-301 and 302 creates a separate cause of action against a surety company. Reference is also made to the Order of Judge Jordan in the case of *Stidham, et al. v. Timothy Hutchison, et al.*, Nos. 3:04-cv-139 and

3:04-cv-168, which is attached hereto as Exhibit B. Judge Jordan held that none of the allegations contained in plaintiffs' complaint related to any acts that the surety company had or had not done but rather only to its position as the surety on the Sheriff's bond. There is no claim for relief made as to the bond provided by Western Surety that creates a cause of action as to this defendant, thus there is no cause of action against it. *Waters v. Bates*, 227 F. Supp. 462, 465-66 (E.D. Tenn. 1964).

It is therefore requested that defendant's Motion to Dismiss be granted and that plaintiffs' complaint against Western Surety be dismissed.

Respectfully submitted this 6th day of October, 2005.

s/Robert L. Bowman  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on October 6, 2005 a true and exact copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular United States Mail. Parties may access this filing through the Court's electronic filing system.

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